

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper 11

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UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

**GORDON T. DANBY, CHARLES E. BRUKL
and LAWRENCE A. MINKOFF
Junior Party,¹
v.
SHUNPEI YAMAZAKI
Senior Party.²**

Patent Interference No. 104,015

Before: SCHAFER, LEE and TORCZON, Administrative Patent Judges.

PER CURIUM

FINAL JUDGMENT

Findings of Fact

1. This interference was declared October 23, 1997. Paper 1.

¹ Patent 4,975,411, granted December 4, 1980, based on Application 07/052,582, filed May 19, 1987. Assignor Fnar Corporation.

² Application 07/172,222, filed March 23, 1988, accorded benefit of Japan 62-069447, filed March 23, 1987 and Japan 62-075205, filed March 27, 1987. Assignor Semiconductor Energy Laboratory Co., Ltd.

2. Preliminary statements and preliminary motions were due January 23, 1997. Paper 2, p. 1.
3. In a paper entered November 5, 1997, junior party Danby moved to extend the time for filing preliminary statements and motions until March 23, 1998. Paper 5, p 1.
4. The motion was granted by APJ Ronald Smith. Paper 9, p. 1.
5. No preliminary statement or preliminary motions are of record in the interference file.
6. In a telephone conversation with paralegal specialist Yolunda Townes on April 9, 1999, counsel for Danby indicated that no preliminary statement or motions were or would be filed.

Discussion

Section 1.629(c) of 37 CFR provides:

1.629 Effect of preliminary statement.

* * * * *

- (c) If a party does not file a preliminary statement, the party:
 - (1) Shall be restricted to the party's effective filing date and
 - (2) Will not be permitted to prove that:
 - (i) The party made the invention prior to the party's filing date or
 - (ii) Any opponent derived the invention from the party.

Since Danby did not file a preliminary statement, Danby is restricted to its filing date of May 19, 1987. 37 CFR 1.629(c). As this date is subsequent to Yamazaki's effective filing date of March 23, 1987, Yamazaki is presumptively the first to invent the subject matter of the count. 37 CFR 1.657(a). Because it did not file a preliminary statement, Danby is not permitted prove that it made the invention prior to its filing date (37 CFR § 1.629(c)(2)(i)) or to present a case-in-chief (37 CFR § 1.651(c)(2)). Since Danby filed no preliminary motions and is precluded from proving a date of invention earlier than Yamazaki's filing date, under the particular facts of this case, the issuance of an order to show cause (37 CFR § 1.640(d)(2)) is unnecessary and entry of a final judgment at this time is appropriate. Accordingly, it is

ORDERED that judgment on priority as to Count 1, the sole count in this interference, is awarded against junior party GORDON T. DANBY, CHARLES E. BRUKL and LAWRENCE A. MINKOFF;

FURTHER ORDERED that judgment on priority as to Count 1 is awarded in favor of senior party SHUNPEI YAMAZAKI;

FURTHER ORDERED that, on the record before the Board of Patent Appeals and Interferences, senior party SHUNPEI YAMAZAKI is entitled to a patent containing claims 1, 2, 4-17, 20-27, 29 and 50-78 (corresponding to Count 1) of Application 07/172,222, filed March 23, 1988;

FURTHER ORDERED that junior party GORDON T. DANBY, CHARLES E. BRUKL and LAWRENCE A. MINKOFF is not entitled to a patent containing claims 1-14 (corresponding to Count 1) of U.S. Patent 4,975,411, granted December 4, 1990, based on application 07/052,582, filed May 19, 1987;

FURTHER ORDERED that if there is a settlement agreement and it has not already been filed, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661; and

FURTHER ORDERED that a copy of this decision be given an appropriate paper number and entered into the file records of U.S. Patent 4,975,411 and Application 07/172,222.

_____ RICHARD E. SCHAFER) Administrative Patent Judge)))))	BOARD OF PATENT APPEALS AND INTERFERENCES
_____ JAMESON LEE) Administrative Patent Judge))))	
_____ RICHARD TORCZON) Administrative Patent Judge)	

cc: (via First Class Mail)

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